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IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 742

HUGHES TRANSPORTATION, INC., *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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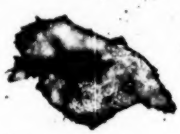
PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITION

Hughes Transportation, Inc., Petitioner, hereby petitions the Court for a writ of certiorari to be issued to review a judgment of the United States Court of Claims entered December 3, 1958, granting motions for summary judgment by the Respondent, United States of America. The decision and judgment below is reported in 168 F. Supp. 219. (See Appendix I)

STATEMENT OF JURISDICTION

The grounds on which the jurisdiction of this Court is invoked are:



4. The Court of Claims has decided an important question of Federal Constitutional and statutory law against the validity of State minimum rate regulation of intrastate contract motor carriers using State highways for transportation of Government property which has not been, but should be, settled by this Court; and such decision is in conflict with applicable decisions of this Court, including *Penn Dairies* v. *Milk Control Commission*, 318 U.S. 261 (1943).

2. The decision of the Court of Claims nullifying the application of State minimum contract carrier rate laws to intrastate transportation of property for the United States impairs the integrity and effectiveness of such laws contrary to the Tenth Amendment of the Constitution of the United States.

3. The decision and judgment of the Court of Claims of which review is sought was decided and entered on December 3, 1958.

4. Title 28, U. S. Code, Sections 1255(1) and 2101(*c*) (Act of June 25, 1948, *c.* 646, 62 Stat. 928, 961) are believed to confer on this Court jurisdiction to review the decision and judgment in question by writ of certiorari where, as here, the Petition is filed within ninety days after entry of such judgment.

QUESTION PRESENTED

The question presented for review is whether in an action by a motor vehicle contract carrier to recover charges for transportation of property of the United States between points entirely within Kentucky on the basis of nondiscriminatory minimum tariff rates prescribed by Kentucky law such requirement of Kentucky law is invalid under the Constitution and laws of

the United States, where such State law allows no rate exception for transportation of property of the United States.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Article VI, Clause 2, and the Tenth Amendment of the Constitution of the United States; and the relevant provisions of the Armed Services Procurement Act of 1947 (Act of February 19, 1948, c. 65, 62 Stat. 21 *et seq.*), Chapter 281, Kentucky Revised Statutes, and Regulations under such Kentucky statutes are set forth hereafter in Appendix II.

STATEMENT OF THE CASE

Beginning in 1948 and from time to time through the year 1952 Petitioner transported numerous truckloads of explosive materials for the Department of the Army. All of such transportation involved in these suits took place on the highways of and between points entirely within the State of Kentucky under contract carrier permits granted by the Division (Department) of Motor Transportation of Kentucky.

Petitioner had quoted rates to the Government for the transportation of "Class A-Explosive Ammunition" between interstate points and between Kentucky points, effective March 13, 1950, as follows:

> "Subject to Rail or Motor Truck Rates which ever is lower.
>
> | Minimum Weight | Classification |
> |---|---|
> | 20,000 | 75% |
> | *25,000 | 65% |

Less Truck Load Shipments subject to Rail Less Car Load Rates Or Motor Truck Less Truck Load Rates whichever is lower.

* Bills of lading may be cross referenced on any particular shipment to take advantage of lower classification."

Petitioner submitted bills to the Government and collected charges for its transportation of Army explosives at rates which were less than those prescribed by Kentucky Law, as contained in an applicable intrastate motor carrier tariff on file with the Kentucky Department of Motor Transportation. After Petitioner had transported numerous shipments of Army explosives a dispute arose over the proper interpretation of Petitioner's rate quotation of March 13, 1950. The General Accounting Office, claiming that the charges made thereunder were higher than provided therein, deducted the claimed excess from amounts due Petitioner for later transportation services.

Petitioner sued the United States in the Court of Claims (Case No. 525-52) for the amounts withheld by the General Accounting Office and, in the alternative, for the higher difference between the amounts collected and the amounts required under the intrastate motor carrier tariff rates prescribed by the Kentucky Statutes and Regulations thereunder. The jurisdiction of the Court of Claims was invoked under Title 28, U. S. Code, Section 1491 (Act of June 25, 1948, c. 646, 62 Stat. 940). The Commonwealth of Kentucky intervened and contended that Petitioner was required to recover the minimum rates prescribed by Kentucky law. The parties filed cross-motions for summary judgment.

By its decision on May 4, 1954 (*Hughes Transp. Inc. v. United States,* 121 F. Supp. 212, 128 Ct. Cl. 221), the Court of Claims interpreted Petitioner's quotation to the Army as requiring the application of the higher minimum uniform tariff rates prescribed by Kentucky Law and thereafter on October 5, 1954, entered judgment in favor of Petitioner for $122,834.31. Meanwhile Petitioner had filed an additional suit in the Court of Claims (Case No. 208-54) based on similar intrastate Kentucky shipments for the Army and claiming the difference between the amounts collected or retained and the amounts required under the Kentucky tariff.

The Government moved for reconsideration of the decision of May 4, 1954, and requested, in the alternative, that it be allowed to offer evidence showing that Kentucky had in fact exempted the explosives transported from the rates prescribed by the Kentucky tariff. The Court of Claims, on July 12, 1955, granted the last alternative request and referred the matter to a Commissioner to take evidence. No further action was taken by the Commissioner on the referral.

Following the decision of this Court in *Public Utilities Commission of California* v. *United States,* 355 U.S. 534 (1958) the Government again filed motions for summary judgment and dismissal in both cases before the Court of Claims, based solely on the *California* decision of this Court. The Court of Claims, by its decision of December 3, 1958, of which review is sought by this Petition, held that for the reasons stated in a decision entered on the same day in *Union Transfer Co. v. United States,* 168 F. Supp. 217, the imposition of the prescribed Kentucky tariff rates was ineffective and granted the Government motion for summary judgment to that extent.

ARGUMENT IN SUPPORT OF ALLOWANCE OF THE WRIT

The Government motion for summary judgment and its grant by the Court below was based solely upon the decision of this Court in *Public Utilities Commission of California* v. *United States*, 355 U.S. 534. The opinion of the Court below (168 F. Supp. 219) stated its decision on this point as follows:

> The Government has made, in each case, a motion for summary judgment. It says that the decision of the Supreme Court of the United States, of January 7, 1958, in *Public Utilities Commission of California* v. *United States*, 355 U.S. 534, is controlling in these cases, and that the attempt of the Commonwealth of Kentucky to impose its prescribed rates upon these shipments is ineffective. For the reasons given in the case of *Union Transfer Co.*, No. 527-56, this day decided, we sustain the Government's position, and to that extent the Government's motions are granted.

The reasons referred to in its contemporaneous decision in *Union Transfer Co.* v. *United States* (Ct. Cl. No. 527-56) 168 F. Supp. 217 were stated as follows:

> The Government has filed a motion for summary judgment, on the asserted ground that the Supreme Court of the United States, on March 3, 1958, in the case of *Public Utilities Commission of California* v. *United States*, 355 U.S. 534 held that a state could not constitutionally regulate rates to be charged to the United States for transportation such as that here involved.
>
> The plaintiffs urge that the *California* decision is distinguishable. They point out that the California statute which was held to be unconstitutional authorized the California Commission to permit carriers to transport property for the United States at reduced rates, "if such ex-

tent and subject to such conditions as (the Commission) may consider just and reasonable." That meant that a reduced rate which was agreeable to the United States and the carrier would have to be submitted to and approved by the Commission before it would be lawful. They point out that there was no such unwieldly procedure in Nebraska; that Nebraska prescribed uniform rates for all shippers, including the United States, and hence did not invite or require or permit the United States to seek the approval of the Commission for reduced rates.

The Plaintiffs argue that all that the Nebraska laws and tariffs did was to make the cost of shipments by the United States greater than it would have been if the carriers, willing to carry for less, had been allowed to do so. The plaintiffs quote certain language from the Supreme Court's opinion, which, they urge, shows that the objectionable feature of the California statute was not the increase in costs which it caused, but the inconvenient procedure prescribed by it. We think the plaintiffs' argument is a legitimate one, in view of some of the language in the Supreme Court's opinion, but, reading the opinion as a whole, we think the *California* decision governs the instant case, and that Nebraska's attempt to impose its prescribed rates upon the United States is invalid, because it is in violation of the Supremacy Clause of the Constitution of the United States.

The decision of the Court of Claims misapplies the *California* case. It ignored the very differences in circumstances relied upon by the majority of this Court in the *California* case to distinguish it from its earlier decision in *Penn Dairies, Inc.*, v. *Milk Control Comm.*, 318 U.S. 216 (1943) among others.

In the *California* case the State statute declared unconstitutional attempted to vest discretionary authority

in a State agency to determine in individual cases whether and to what extent reduced rates for common carrier transportation services to the Government would be permitted. This Court emphasized those discretionary provisions of such State law as the basis for its decision against validity of the State law (355 U.S. at pp. 535, 537, 538, 540). Here in Kentucky, however, the State has only enacted statutes and regulations thereunder which prescribe nondiscriminatory minimum rates for contract motor carriers of property at the level of the lawfully filed tariff rates of common carriers by motor vehicle. (Ky. Rev. Stats. (1948), §§ 281.240, 281.250; Ky. Rev. Stats. (1950), §§ 281.590, 281.685, 281.695; Department of Motor Transportation Regulations, (1942) D. M. T. Nos. 1(B); (1945) D. M. T.-12, Part II, Par. 11; DMT-15 (II 6) 1950; (1952) DMT 6.04; *Baker* v. *Glenn*, 2 F. Supp. 880 (D. C. E. D. Ky., 1933))

In the *California* case this Court distinguished its decision in *Penn Dairies*, by referring to a conflict in the later case between a federal policy of negotiated rates and a State policy of regulation of such negotiated rates. But *Penn Dairies* upheld State prescribed minimum rates on Government contracts where as here the only possible impact on the Government is to increase its costs (318 U.S. at p. 270). In a suit in the Court of Claims to collect lawfully prescribed rates after the transportation event none of the preshipment regulatory impediments to Government shipments referred to by this Court in the *California* case exist or would be relevant. In such a case like this the only impact on the Government is the amount to be paid for the service.

The Armed Services Procurement Act of 1947, which was in effect at the time of the shipments here involved, did not in express terms set aside otherwise valid State law prescribing minimum rates for contract transportation services to the Government. Nor were there at that time any federal regulations lawfully prescribed thereunder which either expressly or impliedly required nullification of such State laws. That federal Act was derived from a long series of enactments referred to and analyzed in *Penn Dairies* (318 U.S. at pp. 271-275). The then effective comparable statutes, substantially the same as the Armed Services Procurement Act of 1947, were held in *Penn Dairies*, not to require the conclusion that they evidenced a federal policy in conflict with State minimum price laws. (318 U.S. at p. 275). The decision in the *California* case does not overrule the decision in *Penn Dairies* but distinguishes it on grounds which make the *California* decision inapplicable to this case.

The regulation of the intrastate rate contracts of private motor carriers who use State highways to carry on their business has long been recognized as a legitimate subject of State concern under the police powers reserved to the States by the Tenth Amendment. The prescription of non-discriminatory minimum rates for such contract motor carriers to protect the public interest in the maintenance of State highways and their use by carriers has been specifically upheld by this Court as a part of that police power. *Stephenson* v. *Binford*, 287 U.S. 251, 273-276 (1932).

The decision of the Court below, nullifying such State prescribed minimum contract rates insofar as

applicable to shipments of Government property over State highways substantially destroys the effectiveness of the Kentucky laws referred to above. Rate cutting practices of contract motor carriers in competition with common carriers for Government business can only result in inability of the States effectively to control the use of their highways for purposes of transportation. Transportation of Government property within Kentucky, in common with other areas of the United States, is so great in comparison with other non-Government traffic that the nullification of State minimum rate laws in this area impairs the integrity of and goes far to make ineffective a large part of such State regulation of carriers rendering transportation services generally.

Respectfully submitted,

DARYAL A. MYSE
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Washington 4, D. C.
Attorney for Petitioner

APPENDIX

APPENDIX I

Opinions Below

IN THE UNITED STATES COURT OF CLAIMS

(Decided December 3, 1958)

Nos. 525-52 and 208-54

HUGHES TRANSPORTATION, INC.

v.

THE UNITED STATES

THE COMMONWEALTH OF KENTUCKY, INTERVENOR

v.

THE UNITED STATES

Mr. Harold A. Myse, for the plaintiff.

Mr. George M. Catlett, with whom was *Mr. Attorney General Jo M. Ferguson*, for the Commonwealth of Kentucky, Intervenor.

Mr. Lawrence S. Smith, with whom was *Mr. Assistant Attorney General George Cochran Doub*, for the defendant.

ON DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENTS

MADDEN, *Judge*, delivered the opinion of the court:

The plaintiff, under permits granted to it by the Department of Motor Transportation of the Commonwealth of Kentucky, was authorized to transport the explosives involved in these claims over the highways of Kentucky and solely within that State, as a contract carrier. The plaintiff quoted prices to the Government for the trucking of explosives from Government installations to other Govern-

ment installations, all within the State of Kentucky. These prices were less than the rates prescribed by the State of Kentucky for such transportation.

After the plaintiff had transported numerous shipments for the Government, it and the Government disagreed as to the interpretation of the plaintiff's offer or quotation of prices, the Comptroller General interpreting the document as providing prices considerably lower than those contended for by the plaintiff. The plaintiff was paid on the basis of the Comptroller General's interpretation, and in 1952 filed Case No. 525-52, suing for the difference. In 1953 the Commonwealth of Kentucky intervened in the suit, alleging that the Government should pay the rates fixed by the Commonwealth of Kentucky, which were much higher than those for which either the Government or the plaintiff were contending in their dispute about the interpretation of the plaintiff's quotation.

This court, in a decision of May 4, 1954, 128 C. Cl. 221, sustained the contention of the Commonwealth of Kentucky, and held that the plaintiff was entitled to recover on the basis of the rates prescribed by the Commonwealth. It did not, of course, resolve the dispute as to the proper interpretation of the plaintiff's quotation to the Government.

On June 1, 1954, the plaintiff filed Case No. 208-54, which related to shipments other than those involved in its prior suit, and sued for the difference between what it had been paid and the rates prescribed by the Commonwealth of Kentucky. The Commonwealth has also intervened in that case.

In Case No. 525-52, the court, as we have said, issued its decision on May 4, 1954. It held that the plaintiff was entitled to recover, but that entry of judgment would be suspended pending computation of the amount of the judgment. Computation was made, and the court entered judgment for $122,834.31 on October 5, 1954. The Government timely filed a motion for reconsideration which contained an

alternative request that it be allowed to offer evidence to the effect that the Commonwealth of Kentucky had in fact exempted the commodities in question from rate regulation. The court on July 12, 1955, ordered that the case be referred to Commissioner Cowen "for the purpose of hearing and reporting on such competent evidence as either party may desire to submit."

In the circumstances, we conclude that the judgment for the plaintiff entered on October 5, 1954, did not become a final judgment, and that Case No. 525-52 is still pending. In Case No. 208-54, no action has been taken.

The Government has made, in each case, a motion for summary judgment. It says that the decision of the Supreme Court of the United States, of January 7, 1958, in *Public Utilities Commission of California* v. *United States*, 355 U. S. 534, is controlling in these cases, and that the attempt of the Commonwealth of Kentucky to impose its prescribed rates upon these shipments is ineffective. For the reasons given in the case of *Union Transfer Co.*, No. 527-56, this day decided, we sustain the Government's position, and to that extent the Government's motions are granted.

There are, in each of the cases, questions not resolved by our determination that the rates prescribed by the Commonwealth of Kentucky are not controlling. Our present decision is, therefore, limited to that question and does not prevent further proceedings to resolve any other relevant question.

The court's decision and opinion of May 4, 1954, and its judgment of October 5, 1954, in Case No. 525-52 are vacated and set aside. Both cases will be treated as pending for further proceedings not inconsistent with this opinion.

It is so ordered.

LARAMORE, *Judge*; WHITAKER, *Judge*; and JONES, *Chief Judge*, concur.

IN THE UNITED STATES COURT OF CLAIMS

No. 527-56

(Decided December 3, 1958)

UNION TRANSFER COMPANY, DBA UNION FREIGHTWAYS, ET AL.

v.

THE UNITED STATES

Mr. James E. Ryan for the plaintiffs. *Mr. Jack Pevoe* was on the brief.

Mr. Lawrence S. Smith, with whom was *Mr. Assistant Attorney General George Cochran Doub*, for the plaintiff.

ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

MADDEN, *Judge*, delivered the opinion of the court:

This is a suit to recover from the Government additional amounts to which the plaintiffs claim they are entitled for transporting explosives for the Government by truck.

Four of the plaintiffs are Nebraska corporations. The fifth, John E. Neylon, is an individual doing business under a trade name. All are in the trucking business, and hold certificates of public convenience and necessity issued by the Nebraska State Railway Commission authorizing them to transport freight over the highways of Nebraska as common carriers, solely within the State.

The plaintiffs transported for the Government numerous shipments of explosives of various types, the transportation being entirely within the State. The shipments were on Government bills of lading, the form of which was prescribed by the Comptroller General of the United States. The plaintiffs had filed with the Government agencies for which they carried explosives, but had not filed with the

Nebraska State Railway Commission, quotations of rates at which they would transport the explosives.

The Nebraska Commission had, in its Official Motor Vehicle Tariff No. 3, issued May 22, 1945, and effective August 15, 1945, prescribed classification ratings, class and commodity rates and rules and regulations to be used *in determining charges to be made for trucking freight in* Nebraska. Tariff No. 3 provided that the rates prescribed in it were the only lawful rates that could be charged. On February 1, 1955, the Nebraska Commission ordered the plaintiffs and other carriers transporting explosives for the Federal Government to proceed immediately to collect any and all existing undercharges which had occurred subsequent to January 1, 1942, in connection with such transportation.

The amounts which the plaintiffs had charged the Government were much smaller than the amounts which were prescribed by the Nebraska Commission's Tariff No. 3. The plaintiffs filed claims with the General Accounting Office for the differences. That office disallowed some of the claims and has not acted upon the rest of them.

The plaintiffs assert in this suit that the charges which they made to and collected from the Government were unlawful because they were lower than those prescribed by the laws of Nebraska and the tariffs and regulations of the State Railway Commission of Nebraska. Their suit is for the difference between the two figures.

The Government has filed a motion for summary judgment, on the asserted ground that the Supreme Court of the United States, on March 3, 1958, in the case of *Public Utilities Commission of California* v. *United States*, 355 U. S. 534, held that a state could not constitutionally regulate rates to be charged to the United States for transportation such as that here involved.

The plaintiffs urge that the *California* decision is distinguishable. They point out that the California statute which was held to be unconstitutional authorized the California Commission to permit carriers to transport property for the United States at reduced rates, "to such extent and subject to such conditions as (the Commission) may consider just and reasonable." That meant that a reduced rate which was agreeable to the United States and the carrier would have to be submitted to and approved by the Commission before it would be lawful. They point out that there was no such unwieldly procedure in Nebraska; that Nebraska prescribed uniform rates for all shippers, including the United States, and hence did not invite or require or permit the United States to seek the approval of the Commission for reduced rates. . . .

The plaintiffs argue that all that the Nebraska laws and tariffs did was to make the cost of shipments by the United States greater than it would have been if the carriers, willing to carry for less, had been allowed to do so. The plaintiffs quote certain language from the Supreme Court's opinion, which, they urge, shows that the objectionable feature of the California statute was not the increase in costs which it caused, but the inconvenient procedure prescribed by it. We think the plaintiffs' argument is a legitimate one, in view of some of the language in the Supreme Court's opinion, but, reading the opinion as a whole, we think the *California* decision governs the instant case, and that Nebraska's attempt to impose its prescribed rates upon the United States is invalid, because it is in violation of the Supremacy Clause of the Constitution of the United States.

The defendant's motion for summary judgment is granted, and the plaintiffs' petition is dismissed.

It is so ordered.

LARAMORE, *Judge*; WHITAKER, *Judge*; and JONES, *Chief Judge*, concur.

APPENDIX II

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Constitution of the United States:

ARTICLE VI, CLAUSE 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges of every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT X:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

United States Statutes:

Armed Service Procurement Act of 1947, Chapter 65—Public Law 413 (Act of Feb. 19, 1948, c. 65, § 2, 62 Stat. 21):

SEC. 2(a) The provisions of this Act shall be applicable to all purchases and contracts for supplies or services made by the Department of the Army, the Department of the Navy, the Department of the Air Force, the United States Coast Guard, and the National Advisory Committee for Aeronautics (each being hereinafter called the agency), for the use of any such agency or otherwise, and to be paid for from appropriated funds.

(b) It is the declared policy of the Congress that a fair proportion of the total purchases and contracts for supplies and services for the Government shall be placed with small business concerns. Whenever it is proposed to make a contract or purchase in excess of $10,000 by negotiation

and without advertising, pursuant to the authority of paragraph (7) or (8) of section 2(c) of this Act, suitable advance publicity, as determined by the agency head with due regard to the type of supplies involved and other relevant considerations, shall be given for a period of at least fifteen days, wherever practicable, as determined by the agency head.

(c) All purchases and contracts for supplies and services shall be made by advertising, as provided in section 3, except that such purchases and contracts may be negotiated by the agency head without advertising if—

(1) determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress;

(2) the public exigency will not admit of the delay incident to advertising;

(3) the aggregate amount involved does not exceed $1,000;

(4) for personal or professional services;

(5) for any service to be rendered by any university, college, or other educational institution;

(6) the supplies or services are to be procured and used outside the limits of the United States and its possessions;

(7) for medicines or medical supplies;

(8) for supplies purchased for authorized resale;

(9) for perishable subsistence supplies;

(10) for supplies or services for which it is impracticable to secure competition;

(11) the agency head determines that the purchase or contract is for experimental, developmental, or

research work, or for the manufacture or furnishing of supplies for experimentation; development, research, or tests: Provided, That beginning six months after the effective date of this Act and at the end of each six-month period thereafter, there shall be furnished to the Congress a report setting forth the name of each contractor with whom a contract has been entered into pursuant to this subsection (11) since the date of the last such report, the amount of the contract, and, with due consideration given to the national security, a description of the work required to be performed thereunder;

(12) for supplies or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed;

(13) for equipment which the agency head determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest;

(14) for supplies of a technical or specialized nature requiring a substantial initial investment or an extended period of preparation for manufacture, as determined by the agency head, when he determines that advertising and competitive bidding may require duplication of investment or preparation already made, or will unduly delay procurement of such supplies;

(15) for supplies or services as to which the agency head determines that the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition: Provided, That no negotiated purchase or contract may

be entered into under this paragraph after the rejection of all bids received unless (A) notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by the agency head to each responsible bidder, (B) the negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the agency head, and (C) such negotiated price is the lowest negotiated price offered by any responsible supplier;

(16) the agency head determines that it is in the interest of the national defense that any plant, mine, or facility or any producer, manufacturer, or other supplier be made or kept available for furnishing supplies or services in the event of a national emergency, or that the interest either of industrial mobilization in case of such an emergency, or of the national defense in maintaining active engineering, research and development, are otherwise subserved: Provided, That beginning six months after the effective date of this Act and at the end of each six-month period thereafter, there shall be furnished to the Congress a report setting forth the name of each contractor with whom a contract has been entered into pursuant to this subsection (16) since the date of the last such report, the amount of the contract, and, with due consideration given to the national security, a description of the work required to be performed thereunder; or

(17) otherwise authorized by law.

(d) If in the opinion of the agency head bids received after advertising evidence any violation of the antitrust laws he shall refer such bids to the Attorney General for appropriate action.

(e) This section shall not be construed to (A) authorize the erection, repair, or furnishing of any public building

or public improvement, but such authorization shall be required in the same manner as heretofore, or (3) permit any contract for the construction or repair of buildings, roads, sidewalks, sewers, mains, or similar items to be negotiated without advertising as required by section 3, unless such contract is to be performed outside the continental United States or unless negotiation of such contract is authorized by the provisions of paragraph (1), (2), (3), (10), (11), (12), or (15) of subsection (c) of this section.

Kentucky Revised Statutes (1948):

281.160 [2739j-59] *Adherence to schedules; preference; discrimination.* No common carrier shall charge, demand, collect or receive a greater, less or different compensation for the transportation of persons or property, or for any service in connection therewith, than the rates, fares and charges specified in its tariffs and classifications filed with and approved by the division and in effect at the time; nor shall any common carrier refund or remit any part of the rates, fares or charges so specified, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable prejudice or discrimination. (1942, c. 185, §1)

281.240 [2739j-86] *Unfair competition with common carrier; statement of charges and other information to be filed.* (1) No contract carrier shall give or cause any undue or unreasonable advantage or preference to those whom he serves as compared with the patrons of any common carrier, or subject the patrons of any common carrier to any undue or unreasonable discrimination or disadvantage, or by unfair competition destroy or impair the service or business of any common carrier, or the integrity of state regulation of any such service or business. In order that the division may enforce these provisions, each contract carrier shall maintain on file with the

division a statement of his charges and of such other matters as the division requires;

(2) "Common carrier", as used in this section, means common carriers as defined in KRS 281.010 and also common carriers by other methods of transportation (1942, c. 185, § 1).

281.250 [2739j-67; 2739j-68] *Powers of Division of Motor Transportation to regulate rates and business.* (1) Whenever, upon complaint or upon its own motion, and after hearing conducted in accordance with its general orders, the division finds that any rate, fare, charge, classification, rule or practice of any contract carrier causes any violation of KRS 281.240, the division shall prescribe the maximum or minimum, or maximum and minimum, rate, fare or charge thereafter to be charged, and the classification, rule or practice thereafter to be observed by the contract carrier, in such manner as, in its judgment, will remove the violation. The division need not fix the same rates as are or may be fixed by the other authorities for carriers engaged in other methods of transportation.

(2) The division may, after such general investigation and hearing as it deems advisable, issue such general and special orders, regulating and controlling the business, rates and practices of contract carriers as it deems reasonably necessary to prevent violation of KRS 281.240. (1942, c. 185, § 1)

Kentucky Revised Statutes (1950):

281.590 Declaration of Policy. It is hereby declared to be the public policy of this Commonwealth to provide for fair and impartial regulation of all transportation subject to the provisions of this chapter, so administered as to recognize and preserve the inherent advantages of each type of motor transportation; to promote safe, adequate, economical and efficient service and foster sound economic

conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for such transportation service, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several states and the duly authorized officials thereof, all to the end of developing, coordinating and preserving a state transportation system by motor vehicles as defined in this chapter adequate to meet the needs of this Commonwealth. All of the provisions of this chapter shall be administered and enforced with the view to carry out the above declaration of policy. (1950, c. 63, § 1; effective June 15, 1950)

281.685 *Adherence to rates, fares, charges and schedules; discrimination.* (1) No common carrier shall charge, demand, collect or receive a greater, less or different compensation for the transportation of persons or property or for any service in connection therewith than the rates, fares and charges specified in its tariffs and classifications filed with the department and in effect at the time; nor shall any common carrier refund or remit any part of the rates, fares or charges so specified, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination.

(2) No contract carrier shall charge, demand, collect or receive a greater, less or different compensation for the transportation of persons or property or for any service in connection therewith than that contained in the contract required to be filed with the department and in effect at the time; or shall any contract carrier refund or remit any part of the charges specified in the contract, or make or give any unreasonable preference or advantage to any person, or subject any person to any unreasonable discrimination. (1950, c. 63 § 24; effective June 15, 1950)

281.695 *Powers of Department of Motor Transportation to regulate rates and service.* (1) The department has

authority to fix or approve the rates, fares, charges, classifications, rules and regulations of each common carrier, and to regulate operating schedules so as to insure adequate and convenient transportation service. If the department, after a hearing, held upon reasonable notice upon its own motion or upon complaint, finds any existing rate to be excessive, inadequate, unreasonable or unjustly discriminatory, or finds the services rendered or facilities employed by any common carrier to be unsafe, inadequate, inconvenient or in violation of law or of the rules and regulations of the department, it may determine the just and reasonable rate to be charged therefor, or the reasonable safe, adequate and convenient service to be thereafter furnished, and shall fix the same by order. The department need not fix the same rates as are or may be fixed by other authorities for carriers engaged in other methods of transportation.

(2) The department has authority to fix or approve the contracts and regulations of each contract carrier so as to insure adequate and convenient transportation service. If the department, after a hearing held upon reasonable notice upon its own motion or upon complaint, finds any existing contract to be excessive, unreasonable or unjustly discriminatory, or finds the services rendered or facilities employed by any contract carrier to be unsafe, inadequate, inconvenient or in violation of law or of the rules and regulations of the department, it may determine the just and reasonable amounts to be charged therefor, or the reasonable, safe, adequate and convenient service to be thereafter furnished, and shall fix the same by order. (1950, c. 63, § 26; effective June 15, 1950)

Kentucky Division (Department) of Motor Transportation Regulations:

(1942) DMT No. 1B:

Every motor carrier is required by law to file a tariff with this department, either by participating in an

approved tariff, or by filing and having approved a similar tariff for themselves.

The rates in Tariff No. 7 are approved and are the rates which must be charged by all truck operators, whether parties to this tariff or not, and are the minimum rates which may be charged by contract carriers whether party to this tariff or not.

The rules and regulations of Kentucky Intrastate Tariff No. 7 are adopted as the rules and regulations of the Division of Motor Transportation governing all operators whether participants in said tariff or filing their own.

(1949) DMT-12. Part II. Paragraph 11:

All contract carriers hauling items, other than those specifically designated as contract carrier items, must, in the bilateral contract they are required to file, specify the rates they expect to charge, which rates or charges shall not be less than the minimum rates charged by common carriers for the same or similar service as shown by Tariff No. 7-A and supplements thereto, except that if in the opinion of the Director a different rate or charge should be made for the service rendered, he may approve a different rate.

DMT-15 (II 6) 1950:

If the application is for a contract carrier permit to haul exempted commodities, pursuant to K. R. S. 281.625 (5), it shall state, among other things, that the application is for authority to haul only exempted commodities. Charges relative to exempted commodities need not be filed with the application but may be required by the Department at any time. If the application is for a contract carrier permit to haul items other than exempted commodities, the application must state the person or persons for whom the hauling is to be done and the items for which authority is sought to haul and shall be

accompanied by a bilateral contract, binding on both shipper and carrier, which contract, among other things, shall specify the items to be hauled and charges to be made, which charges shall be filed in duplicate at least thirty (30) days prior to the proposed effective date thereof and shall not be less than the minimum charges made by common carriers for the same or similar service, as published in Tariff Number 7-A, D. M. T. Ky. No. 14, supplements thereto or successive issues thereof, except that, if, in the opinion of the Department, a different rate should be made for the service rendered, it may approve same.

(1952) DMT 6.04:

Pursuant to the authority of KRS 281.600, 281.675, 281.680, 281.685 and 281.695:

RATES FOR CONTRACT CARRIERS OF PROPERTY

(A) *Contract Carrier—Non Exempted Commodity.* Every contract carrier of property authorized to engage in intrastate commerce in Kentucky shall have on file with the Department at all times a copy of its bilateral contract or contracts naming its rates and charges which rates and charges shall not be less than the minimum rates and charges made by common carriers for the same or similar service, except that if in the opinion of the Department, a different rate should be made for the service rendered, it may approve same. Instead of publishing its rates and charges in each bilateral contract, a contract carrier may become a participating party to a tariff published or issued by another carrier or any tariff issuing agency, provided, however, that every contract made by a contract carrier must incorporate, by reference, the rates and charges published in such tariff. All such tariffs filed with the Department must, as to size, text symbols, contents, general composition and concurrence or

power of attorney, conform to the regulations set out herein governing the filing of tariffs by common carriers.

(B) *Contract Carrier—Exempted Commodity.* The Department may require carriers of exempted commodities to file their rates or contracts at any time, and may enter into an investigation of the reasonableness of such rates or contracts at any time.